IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.84 OF 2006

Pandurang Achyut Kasavkar ...Petitioner
Vs.
The State of Maharashtra & Ors. ...Respondents

Ms. Pooja Bhojne i/b. Mr. Nitin Sejpal (absent) for the Petitioner
Mr. Raja Thakare, Spl. Counsel with Mrs. U.V. Kejriwal, A.P.P for the State.

CORAM: SHRI J.N.PATEL &
SMT. ROSHAN DALVI, JJ.
DATED: 31ST AUGUST, 2006

P.C.

1. This Petition was called in the morning session, the learned Counsel made a request that the Senior Advocate will be arguing the matter, he is on his legs before the other Court, therefore, at her request the matter was directed to be listed at 3.00 p.m.

2. At 3.00 p.m also the learned Counsel for the Petitioner sought adjournment on the ground that the Senior Counsel is busy before the other Bench. We made it clear to her that if the Petitioner cannot make his Counsel available when the

matter is called by this Court even after accommodating the Counsel engaged by him then this Court will proceed to examine the matter and decide the Petition.

3. The learned Counsel then requested the Court to keep back the matter for 5 minutes, we waited for the Counsel for more than ½ an hour, it appears that the Counsel is not available.

4. This is a short question for our consideration as to whether the Commissioner of Police, who has earlier refused to grant sanction for prosecuting the Petitioner and others under M.C.O.C. Act, 1999, whether can re-consider the case and accord the sanction.

5. It is the contention of the Petitioner that at the time the Respondent no.4 i.e. Commissioner of Police who is the authority to grant sanction to prosecute accused under M.C.O.C. Act, 1999 examined the case and arrived at the decision that no case is made out for granting sanction for the Petitioner and other co-accused under M.C.O.C. Act, 1999. It could not have reviewed its decision without any fresh material being placed before him.

6. It is subsequently contended that the Respondent No.4

had accorded sanction under the shadow of the order passed by the learned Special Judge under the M.C.O.C. Act, 1999 while deciding the Misc. Application No.443 of 2004 preferred by the Respondent No.2 and it itself show that it was not granted by appreciating the material and taking an independent decision.

7. In response to the Petition we called upon the Respondent No.4 to file his affidavit, explaining the facts and circumstances for reviewing his decision and according sanction, which is subject matter of challenge.

8. Mr. A.N. Roy, Commissioner of Police has filed his affidavit dated 31st August, 2006, which has been taken on record, copy of which is furnished to the other side. In his affidavit the Commissioner of Police has given cogent reasons for reviewing and reconsidering the case of the Petitioner and other co-accused in according sanction under M.C.O.C. Act, 1999. He has specifically stated that it is only after the order dated 16th December, 2004 which came to be passed by the learned Special Judge under M.C.O.C. Act, 1999 was placed before him, he realized that he has misconstrued the pre-requsite for application of provisions of M.C.O.C. Act, 1999 as defined under Section 2(d) of the said Act. The Commissioner of Police has also accepted that what

prevailed on him in refusing sanction was because of mis-interpretation of the requirement and he was genuinely of the belief that in the two cases if the accused were acquitted, it would not be an appropriate basis for sanctioning prosecution under the provisions of the M.C.O.C. Act, which is not so and that is why in view of there being a case made out under Section 2 (d) of M.C.O.C. Act he accorded sanction of the Petitioner and other accused under Section 23(2) of the M.C.O.C. Act. The Commissioner of Police has further affirmed that **"**once this legal aspect was clarified by a judicial order I went through all the material collected in the case under consideration including the statements recorded under 161 Cr.P.C, confession of the accused recorded under Section 18 of the MCOC Act, T.I. Parade, Evidence regarding Mobile Phones and the recoveries, and on a consideration of all these aspects, in view of their being no legal bar under Section 2(d) of the MCOCA I accorded sanction for prosecution under Section 23(2) of the MCOCA.**"** This indicates due application of mind and clearly indicates that he was independent of any influence or for extraneous considerations or because of the order passed by the learned Judge. We therefore, do not find that the competent authority i.e, the Commissioner of Police has committed any error, illegal, irregularity in according sanction.

9. We may make it clear that the Petitioner as well as the co-accused can always raise this as an issue before the trial Court, as to whether the sanction granted by the competent authority is valid or not (State of M.P. Vs. Dr. Krishna Chandra Sakrana (1996) 11 SCC 439)

10. We find no merits in the Petition. Petition dismissed. Rule discharged.

11. In view of the fact that we dismissed the Petition all interim orders passed by this Court no more survives.

(SMT.ROSHAN DALVI, J.) (SHRI. J.N. PATEL, J.)